

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance Agent License
of Terry L. Colvin, License No. 130070

**RECOMMENDATION FOR
SUMMARY DISPOSITION**

The above matter is before Administrative Law Judge George A. Beck on the Motion of the Department of Commerce for a Summary Disposition. The Department filed its Motion with the Office of Administrative Hearings on January 10, 2002. By a letter dated January 11, 2002, the Administrative Law Judge advised Mr. Colvin that a reply to the Motion had to be filed on or before January 25, 2002. The only reply filed by Mr. Colvin was a copy of a January 19, 2002, letter to the Minnesota Department of Commerce in which he asked to voluntarily surrender his insurance license as of January 31, 2002, and advised the Department that he had sold his agency as of that date.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130 appeared representing the Department of Commerce. Terry L. Colvin, 6000 Bass Lake Road, Suite 100, Crystal, Minnesota 55429 represented himself.

Based upon all of the filings by the parties, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED:

1. That the Commissioner of Commerce grant the Department's Motion for Summary Disposition.
2. That the Commissioner take disciplinary action against the insurance agent license of Terry L. Colvin.

Dated this 13th day of May 1998.

/s/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommendation for Summary Disposition. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity

must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Deputy Commissioner. Parties should contact Gary A. LaVasseur, Deputy Commissioner, Enforcement and Licensing Division, to ascertain the procedure for filing exceptions or presenting argument.

MEMORANDUM

The Department moves for a Summary Disposition in this matter and has filed a Memorandum of Law in support of the Motion along with two affidavits. In the copy of the letter to the Commissioner submitted by Mr. Colvin, he denies the allegations of wrongdoing filed against him by the Department. He asks that all charges against him be dismissed. The Department is not obligated to accept a voluntary surrender of a license and has not agreed to dismiss this matter. Mr. Colvin has not filed a reply to the Motion that argues the merits of this case.

Summary Disposition is the administrative equivalent to Summary Judgment.¹ Summary Judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.² A genuine issue is one which is not a sham or frivolous.³ A material fact is a fact the resolution of which will affect the result or outcome of the case.⁴ Where no factual disputes are raised the resolution of which might clarify the application of law, summary judgment is proper.⁵ The affidavits and arguments submitted shows that Mr. Colvin is licensed as an insurance agent with the Department. The investigation concerning Mr. Colvin began in January 2001 when an insurance agent at an agency owned and operated by Mr. Colvin complained to the Department that Mr. Colvin was issuing illegal automobile insurance policy binders, allowing an unlicensed person to act as an agent, and that he had forged and cashed checks made out to the Complainant and his step-son.

Mr. Colvin met with the Department investigator on June 7, 2001, and admitted that he did not maintain financial records at his agency for his customers, including bank accounts and clients ledgers. He admitted that he had erased his computer's hard drive after the commencement of the Department's investigation to eliminate client records. Mr. Colvin admitted that he allowed an unlicensed person to act as an insurance agent and that he had forged signatures on at least two separate checks intended for agents and deposited the funds in his own bank account. He was unable to produce records of binders being issued and premium payments being remitted for certain customers and he failed to maintain financial and client records, verification of coverage, and premium payments for these individuals. He admitted that he failed to submit binders to insurers for some of these individuals despite taking their checks.

¹ Minn. Rule 1400.5500(K).

² *Sauter v. Sauter*, 244 Minn. 482, 70 N.W.2d 351, 353 (1955). *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).

³ *A & J Builders, Inc. v Harms*, 288 Minn. 124, 179 N.W.2d 98 (1970).

⁴ *Zappa v. Fahey*, 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (1976).

⁵ *Holiday Acres No. 3 v. Midwest Federal Savings & Loan Association of Minneapolis*, 308 N.W.2d 471, 480 (Minn. 1981).

On July 23, 2001, the Complainant called the Department and stated that Mr. Colvin had offered to pay him \$4,000.00 if he would materially change the statements he made to the Department concerning the forged and converted checks by stating that Colvin had permission to convert them. By his own admissions, Mr. Colvin has violated a number of statutes. These actions demonstrate that Mr. Colvin is "untrustworthy, financially irresponsible, or otherwise incompetent to act as an insurance agent" in violation of Minn. Stat. § 60K.11, subd. 1(iii) and that Mr. Colvin is engaged in "fraudulent, deceptive, and dishonest acts and practices" in violation of Minn. Stat. § 60K.11, subd. 1(x). Additionally, by forging signatures on his agents' checks and depositing them into his own account, Mr. Colvin improperly "withheld, misappropriated, or converted to his own use money belonging to the persons" in violation of Minn. Stat. § 60K.11, subd. 1(xi). He also "forged another's name to checks" in violation of Minn. Stat. § 60K.11, subd. 1(xii). Mr. Colvin further "improperly withheld, misappropriated or converted" money belonging to another person contrary to Minn. Stat. § 72A.20, subd. 18.

Moreover, by allowing an employee of his agency to sell insurance without a license, Mr. Colvin violated Minn. Rule 2795.0800, subp. 1(A) which obligates him to ensure that his employees "are properly licensed in the lines of insurance in which they do business." He has also violated Minn. Rule 2795.0800, subp. 1(B) by his failure to promptly remit all premiums in his possession obtained as a result of an insurance transaction. It is also clear, based upon this record, that he "has not observed high standards of commercial honor and just and equitable principles of trade in the conduct of his insurance business" in violation of Minn. Rule 2795.1000. He has also failed to maintain client financial records as required by Minn. Rule 2795.1400 and has shown that he does not intend nor has he engaged in carrying out the business of insurance in good faith as required by Minn. Stat. § 60K.11, subd. 1(i).

Since the Licensee has made no specific denial of material facts in this proceeding, the facts alleged by the Department are accepted. A general denial is insufficient to reply to a Motion for Summary Disposition. The Department is also entitled to judgment as a matter of law since the application of the statutes to the facts shown clearly demonstrates that Mr. Colvin has violated insurance licensing law. It is therefore appropriate that the Commissioner of Commerce take disciplinary action against his license.

G.A.B.